

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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ASSIGNEE.....Symantec Corporation
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EXAMINER.....Ted T. Vo
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TITLE.....METHOD AND SYSTEM FOR DESCRIBING AND
EXTRACTING APPLICATION INFORMATION

APPEAL BRIEF

To: MS Appeal Brief – Patents
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Dear Sir:

In accordance with 37 C.F.R. § 41.37(a), Appellant respectfully submits this Appeal Brief in furtherance of the Notice of Appeal filed in the above-identified application on 22 January 2009, which appeals the Non-Final Office Action dated 13 November 2008. In compliance with 37 C.F.R. § 41.37(a)(1), Appellant submits one (1) copy of this Appeal Brief.

I. REAL PARTY IN INTEREST

Symantec Corporation is the real party in interest in the present application. An assignment of all rights in the present application to Symantec Corporation was recorded by the U.S. Patent and Trademark Office on 6 September 2007 at Reel 019781, Frame 0651.

II. RELATED APPEALS, INTERFERENCES, AND JUDICIAL PROCEEDINGS

A notice of Appeal and a request for Pre-Appeal Conference were previously filed in this case on 4 September 2007. A Notice of Panel Decision from Pre-Appeal Brief review was mailed on 17 September 2007. The Panel reopened prosecution. Appellant is not aware of any other appeals, interferences, or judicial proceedings that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

III. JURISDICTIONAL STATEMENT

In accordance with 37 C.F.R. § 41.37(a), Appellant respectfully submits this Appeal Brief on 15 April 2009 in furtherance of the Notice of Appeal filed in the above-identified application on 22 January 2009, which appeals the Non-Final Office Action dated 13 November 2008. The fees required under 37 C.F.R. § 41.20(b)(2) are provided in the accompanying TRANSMITTAL OF APPEAL BRIEF.

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VI. STATUS OF AMENDMENTS

No amendments to the claims have been made since the Non-final Office Action dated November 13, 2008, which Action is the subject of this Appeal. A copy of the pending claims is attached to this Brief in the Appendix.

VII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 4-7, and 10-18 stand rejected under 35 U.S.C. § 112, first paragraph, as being based on a disclosure which is not enabling. Claims 1, 4-7, and 10-18 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1, 3-6, 13, 14, 18, 21, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Nico Mak's Computing, Inc, WinZip Version 7.0 ("Nico Mak"), in view of "Go inside WinZip 7.0," by Tom O'Connell ("O'Connell"), and further in view of "Total Virus Defense Suite – Best Practices Guide – Migration Technical Manual" Ver. 4.x by Network Associates, Inc. ("Network Associates").

Appellant respectfully requests that these grounds of rejection be reviewed in the instant Appeal.

VIII. STATEMENT OF FACTS

A. Facts Associated with the Claim Terms "Console" and "Scan"

In the 35 U.S.C. § 112 paragraph 1 rejection of claims 1, 4-7, and 10-18, the Examiner states the rejected claims are "based on a disclosure which is not enabling" because the terms console and scan are not "described in the specification for how they look like [sic] and how they do [sic] in supporting the

claims.” Non-Final Rejection mailed Nov. 13, 2008, page 5.

With respect to the term console, the Examiner states, “the specification clearly uses [console] without any description.” Non-Final Rejection mailed Nov. 13, 2008, page 3. To support this conclusion, the Examiner states “their specification does not make [sic] any details ‘console.’” Non-Final Rejection mailed Nov. 13, 2008, page 4. The Examiner also states, “there is no description for the functionality of the console.” Non-Final Rejection mailed Nov. 13, 2008, page 3.

With respect to the term scan, the Examiner states, “For the term ‘scan said first computer,’ it is only a term used without describing in the specification how the computer is scanned.” Non-Final Rejection mailed Nov. 13, 2008, page 3. The Examiner asserts that the term scan “appears [sic] use the mental language this is said common in the art.” The Examiner also argues that the term scan “is a vague because it tend [sic] to embrace the common thing.” Non-Final Rejection mailed Nov. 13, 2008, page 3.

The specification of the application on appeal (hereinafter “specification”) teaches that “[t]he Console is run on the Source PC (the Source PC is the PC the user is migrating from)” and that the console is an “executable program [that] scans the drive(s) for the environment settings and files to be migrated and builds

the STAMPs.” Paragraph 76. The specification further teaches that “[t]he Console includes scan options for optimizing the disk scans and a filter for determining which settings and file types are included in the package for transfer.” Paragraph 76. The specification also states, “The Console also includes an edit function, which allows the user to add or delete files and settings from the STAMP before delivery to the Target PC.” Paragraph 76.

B. Facts Associated with the Claim Feature “Application Interface File”

In the 35 U.S.C. § 103(a) rejection of claim 1, the Examiner states that the claimed application interface file “is in a self extract WinZip file, sent from a computer to another computer, [sic] this file provides the features as discussed in WinZip Version 7.0 of Nico Mak, such as an .ini file or using registry.” Non-Final Rejection mailed Nov. 13, 2008, page 8.

In paragraph 0024, the specification teaches that the invention “makes use of the Application Interface File (AIF) and describes, extracts, and translates the information in an AIF to simplify the migration of information from one personal computer (PC) to another PC.” An application interface file, which is also referred to in the specification as an application information file, is “a collection of tags grouped together into a file.” Specification, paragraph 24. According to the specification, “[a]n application program can be described by use of a defined set of

tags” and “[t]hese tags can identify multiple versions of an application, how to convert settings across application versions, registry information, and files.” Paragraph 24. Thus, “[u]sing an AIF, this invention takes the described data and migrates an application along with its settings and data files to another computer.” Specification, paragraph 24.

C. Facts associated with the Claim Phrases “Console in Communication with said application interface file” and “Console configured to scan said first computer for said files and settings to be migrated to said second computer”

In the 35 U.S.C. § 103(a) rejection of claim 1, the Examiner states, “To disclose for this inherent acts [sic] of using a console for scanning [sic] computer before migrating files from an UnZip [sic] package to the computer.” Non-Final Rejection mailed Nov. 13, 2008, page 10. In the 35 U.S.C. § 103(a) rejection of claim 1, the Examiner suggests that the claimed console’s functionality is taught, presumably in O’Connell, as “acting of [sic] self-extracting, this is disclosed by the WinZip functionally run [sic] when it is chosen as ‘extracting’ given on the WinZip Toolbars.” Non-Final Rejection mailed Nov. 13, 2008, page 9. O’Connell teaches, on page 5, that a user may “select the file(s) you want to compress” to add to a zip file.

As further support that the cited references teach the scanning functionally of the console, the Examiner states, “NA discloses performing the scan of all drives

available to the system (See p. 81 Table C-2: /ALLDRIVES or /AD, or p. 82, ?LC.).” Non-Final Rejection mailed Nov. 13, 2008, page 10. The examiner further submits, “In a description for the reference for file migration, NA provides .INI files that run in a computer for a configuration setup (See p. 39).” Non-Final Rejection mailed Nov. 13, 2008, page 10. According to the Examiner, “the reference also provides various scanning including to scan the registry for setting up file migration (i.e. Title: Migration Technical Manual).” Non-Final Rejection mailed Nov. 13, 2008, page 10.

D. Facts Associated with the Claim Feature “Self-Extracting Auto-Migration Package comprising Files and Settings for Migration to a Second Computer”

The Examiner, without citing any supporting sources, argues that a “self-extracting auto-migration package comprising said files and settings” is “any .ZIP file created by WinZip 7.0.” Non-Final Rejection mailed Nov. 13, 2008, page 9. The only reference to settings among sources cited by Examiner is in Nico Mak, which teaches that “WinZip now uses the registry instead of winzip32.ini.” *Nico Mak*, page 1. The specification teaches that Self-extracting Auto-Migrate Packages (STAMPs) contain “the intelligence needed to write files to the appropriate destination and to make the appropriate registry changes.” Paragraph 77.

E. Facts Associated with the Claim Phrase “Personality Package”

In the 35 U.S.C. § 103(a) rejection of claim 3, the Examiner suggests that the claimed personality package is “[A]ll the content used to packed in the WinZip file; *i.e.* a created zipped file having, ‘Something or Other zip’ . . . *i.e.* a package of an application used to stored in a directory such as seen in O’Connell, p. 4.” Non-Final Rejection mailed Nov. 13, 2008, page 12. On page 4, O’Connell teaches that “when you extract a file, it is placed by default in the folder you last extracted to.”

F. Facts Associated with the Claim Phrase “an executable program that scans for environment settings and files to be migrated and builds self-extracting auto-migration packages”

In the 35 U.S.C. § 103(a) rejection of the executable program recited in claim 4, the Examiner states, “Nico Mak discloses the WinZip with Drag and Drop, ‘File Properties’ for creating self-extractor packages.” Non-Final Rejection mailed Nov. 13, 2008, p. 10.

G. Facts Associated with the Claim Element “Edit Function”

In the 35 U.S.C. § 103(a) rejection of the edit function recited in claim 5, the Examiner states, “Nico Mak discloses WinZip which is adaptable to a standard Window like Window 95, editable by a ‘File Properties.’” Non-Final Rejection mailed Nov. 13, 2008, page 11.

H. Facts Associated with the Claim Element “Filter”

In the 35 U.S.C. § 103(a) rejection of the filter recited in claim 6, the Examiner states “With regard to [sic] limitation of Claim 6, see all commands shown in page 2.” Non-Final Rejection mailed Nov. 13, 2008, page 11.

I. Facts Associated with the Claim Element “Operating System Conversion Capability”

In the 35 U.S.C. § 103(a) rejection of the operating system conversion capability recited in claim 13, the Examiner states, “With regard to [sic] limitation of Claim 13, Buttons EXTRACT in the ZIP file.” Non-Final Rejection mailed Nov. 13, 2008, page 11

J. Facts Associated with the Claim Element “Disk Space Verification”

In the 35 U.S.C. § 103(a) rejection of the disk space verification feature recited in claim 14, the Examiner states, “With regard to [sic] limitation of claim 14, associated with Windows commands.” Non-Final Rejection mailed Nov. 13, 2008, page 11.

K. Facts Associated with the Claim Feature “Determining Whether a File is a Shell Link”

In the 35 U.S.C. § 103(a) rejection of the “determining whether a file is a shell link” feature recited in claim 22, the Examiner states that the “shell link is part of the Windows operating system.” Non-Final Rejection mailed Nov. 13, 2008, page 15.

L. Facts Associated with the Claim Feature “Updating Shell Links Using a Shell Link List”

In the 35 U.S.C. § 103(a) rejection of the “updating shell links using a shell link list” feature recited in claim 22, the Examiner states that “WINZIP 7.0 or WINZIP are embedded in Windows, where shell links is [sic] part of the Windows operating system.” Non-Final Rejection mailed Nov. 13, 2008, page 15.

IX. ARGUMENT

A. Lack of Clarity in the Examiner’s Rejections

As noted in Appellant’s Amendment filed August 1, 2008, the rejections of claims 4-6, 13, 14, 21, and 22 are unclear. The Examiner has not responded to Appellant’s concerns. As discussed in greater detail below, the pertinence of the cited references that Examiner relied upon in the rejections of claims 4-6, 13, 14, 21, and 22 has not been clearly explained as required by 37 C.F.R. § 1.104(c)(2).

B. Claim Rejections – 35 U.S.C. § 112 First Paragraph (Claims 1, 3-7, and 10-18)

Claims 1, 3-7, 10-18, 21, and 22 are rejected under 35 U.S.C. § 112 as being based on a disclosure that is not enabling. Appellant respectfully traverses these rejections. The rejections under 35 U.S.C. § 112 first paragraph were presented for the first time in the Non-Final Rejection mailed Nov. 13, 2008.

The Examiner argues that claimed features “console” and “scan a computer” are “not described in the specification for how they look like and how they do in supporting the claims.” Non-Final Rejection mailed Nov. 13, 2008. Appellant asserts that the Examiner’s reasoning does not support a rejection based on lack of enablement. 35 U.S.C. § 112 states that “[T]he specification shall contain a written description of the invention, and of the manner and process of making it and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art . . . to make and use the same.”

The claim features “console” and “scan a computer” are described in the specification “in such full, clear, concise, and exact terms as to enable any person skilled in the art . . . to make and use the same,” as required for enablement under 35 U.S.C. § 112 first paragraph. For example, the specification states:

The Console is run on the Source PC (the Source PC is the PC the user is migrating from). This executable program scans the drive(s) for the environment settings and files to be migrated and builds the STAMPS. The Console includes scan options for optimizing the disk scans and a filter for determining which settings and file types are included in the package for transfer. The Console also includes an edit function, which allows the user to add or delete files and settings from the STAMP before delivery to the Target PC (the Target PC, also referred to as the destination PC, is the PC the user is migrating to).

Paragraph 0076. One of skill in the art would understand, based on the disclosure in the specification, how to make and use the invention set forth in the claims.

With respect to the term console, the Examiner states, “In the specification, it replies [sic] only on the word ‘console’ in the Figure 2 without any defining the meaning of console.” The Examiner’s reasoning is unclear and appears to be directed to the written description requirement rather than the enablement requirement. Indeed, “The enablement requirement of 35 U.S.C. 112, first paragraph, is separate and distinct from the description requirement. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563, 19 USPQ2d 1111, 1116-17 (Fed. Cir. 1991).” MPEP § 2164. Furthermore, the Examiner’s assertion is incorrect—the specification does describe the meaning of the term console (see, for example, paragraph 0076).

With respect to scanning, the Examiner states, “The term ‘said console configured to scan said first computer’ is a mere abstract idea, and it does not show how a computer is scanned.” The Examiner’s conclusion that scanning is an abstract idea is wrong, and even if it were right, would not support a conclusion that the claimed scanning is not enabled. One of ordinary skill in the art would know, based on the specification, how to perform the claimed scanning. For

example, the specification states that the console scans drives for settings and files. Paragraph 0076.

C. Claim Rejections – 35 U.S.C. § 112 Second Paragraph (Claims 1, 4-7, and 10-18)

Claims 1, 4-7, and 10-18 are rejected under 35 U.S.C. § 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Appellant traverses these rejections.

1. The term “Console” is Not Indefinite

The term “console” is not indefinite. However, in the Non-Final Rejection of May 22, 2008, the Examiner argued:

Since the remarks contend the Examiner’s address as the Window together with programs that make Winzip acting the word ‘console’. It does not know what the ‘console’ of the specification is. Since the term scanning the device is the act of running the file system, particularly provided by MS-DOS, it is not clearly what is the applicant’s console, whether it is the same with the standard console as shown by the Microsoft dictionary or not.

Page 5. In response to the Examiner’s argument, Appellant noted that the Examiner’s argument was unclear and requested clarification. Appellant also noted that:

Examiner's analysis does not appear to take into consideration that "[a] fundamental principle contained in 35 U.S.C. § 112, second paragraph is that applicants are their own lexicographers." MPEP § 2173.01. The MPEP further notes, that "Applicants can define in the claims what they regard as their invention essentially in whatever terms they choose so long as 'any special meaning assigned to a term is clearly set forth in the specification. See MPEP § 2111.01. Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in *In re Swinehart*, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought. MPEP § 2173.01."

Amendment filed August 1, 2008, pages 15 and 16. In the Amendment of August 1, 2008, Appellant also noted that:

The meaning of the term console is clear in both the claims and the specification. For example, the specification recites, "The Console is run on the Source PC. . . . This executable program scans the drive(s) for the environment settings and files to be migrated and builds the STAMPS." *Specification*, ¶ 0076. Similarly, claim 1 recites that "said console [is] configured to scan said first computer for said files and settings to be migrated to said second computer." Thus, the meaning of the term "console" is not indefinite.

Amendment filed August 1, 2008, page 16.

In response to Appellant's argument, the Examiner argues that "the specification clearly uses [console] without any description" and "their specification does not make [sic] any details 'console.'" Non-Final Rejection mailed Nov. 13, 2008, pages 3 and 4. These conclusions are wrong and ignore the specification's description of a console as being an executable program that "scans the drive(s) for the environment settings and files to be migrated and builds the STAMPS." Paragraph 0076.

In the Non-Final Rejection mailed Nov. 13, 2008, the Examiner also states, "there is no description for the functionality of the console." Page 3. Again, the Examiner's conclusion is wrong and ignores the specification's teaching that the console "scans the drive(s) for the environment settings and files to be migrated and builds the STAMPS[,] . . . includes scan options for optimizing the disk scans and a filter for determining which settings and file types are included in the package for transfer[,] . . . [and] includes an edit function, which allows the user to add or delete files and settings from the STAMP before delivery to the Target PC." Paragraph 0076. Appellant cannot understand why the Examiner continues to maintain that "the specification clearly uses [console] without any description." Non-Final Rejection mailed Nov. 13, 2008, page 3. Paragraph 0076 of the

specification clearly describes the console and the functionality of the console, and the Examiner's assertion that the console is not described is simply false.

2. *"Scan said First Computer" is not Indefinite*

The phrase "scan said first computer" is not indefinite. However, in the Non-Final Rejection of May 22, 2008, the Examiner argued that the "application does not show what is meant by 'scan a computer'" and "it is only a term used without describing how the computer is scanned." Page 2. In response to the Examiner's assertions, Appellant argued:

Applicant notes that Examiner's statement, even if correct (which Applicant does not concede), fails to provide a basis for rejecting the claims under 35 U.S.C. § 112. "The requirement to 'distinctly' claim means that the claim must have a meaning discernible to one of ordinary skill in the art when construed according to correct principles. . . . Only when a claim remains insolubly ambiguous without a discernible meaning after all reasonable attempts at construction must a court declare it indefinite." *Metabolite Labs., Inc. v. Lab. Corp. of Am. Holdings*, 370 F.3d 1354, 1366, 71 USPQ2d 1081, 1089 (Fed. Cir. 2004).

Claim 1 is not "insolubly ambiguous without a discernible meaning after all reasonable attempts at construction." The specification describes "scan a computer" and further, one of ordinary skill in the art would recognize that there are numerous well-known techniques

that may be used to scan a computer. Thus, the meaning of the phrase “scan said first computer” is not indefinite and Applicant requests withdrawal of the § 112 rejection of the phrase “scan said first computer.”

Amendment filed August 1, 2008, page 16. In response to Appellant’s argument, the Examiner argues, “For the term ‘scan said first computer,’ it is only a term used without describing in the specification how the computer is scanned.” Non-Final Rejection mailed Nov. 13, 2008, page 3. The Examiner’s conclusion is erroneous—the specification notes that a computer is scanned for “settings and files to be migrated.” Paragraph 0076.

The Examiner also asserts that the term scan “appears [sic] use the mental language this is said common in the art.” Non-Final Rejection mailed Nov. 13, 2008, page 3. The Examiner’s reasoning does not make sense. Furthermore, even if the term scan could be characterized as using mental language that is common in the art—which applicants do not concede—the reasoning that a term uses mental language that is common in the art is not a valid basis for a rejection under 35 U.S.C. § 112 second paragraph.

The Examiner further argues that the term scan “is a vague [sic] because it tend [sic] to embrace the common thing.” Non-Final Rejection mailed Nov. 13,

2008, page 3. It is unclear what it means for a claim feature to “tend to embrace the common thing.” Furthermore, the reasoning that a claim feature “tend[s] to embrace the common thing” is not a valid basis for a rejection under 35 U.S.C. § 112 second paragraph.

In conclusion, the meanings of the claim terms console and scan are clearly ascertainable in the context of the specification. The Examiner’s reasoning is unclear, has no basis in fact, and does not support a rejection under 35 U.S.C. § 112 second paragraph.

D. Claim Rejections – 35 U.S.C. § 103

In the Action, claims 1, 2-6, 13, 14, 18, 21, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Nico Mak’s Computing, Inc, WinZip Version 7.0 (“Nico Mak”), in view of “Go inside WinZip 7.0,” by Tom O’Connell (“O’Connell”), and further in view of “Total Virus Defense Suite – Best Practices Guide – Migration Technical Manual” Ver. 4.x by Network Associates, Inc. (“Network Associates”).

35 U.S.C. § 103(a) recites, in part:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been

obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

To establish *prima facie* obviousness of a claimed invention, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Appellant respectfully submits that the cited references, even if combined, do not establish a *prima facie* case of obviousness because they do not show, teach, or suggest all claimed features.

1. The Cited References Fail to Teach Various Features of Claim 1

Nico Mak, O’Connell, and Network Associates, fail to teach various features of claim 1. None of Nico Mak, O’Connell, or Network Associates teaches or suggests an application interface file, a console configured to scan a computer, or a self-extracting auto-migration package, as recited in claim 1. The Amendment filed August 1, 2008 responded to the assertions in the Non-Final Rejection of May 22, 2008 regarding the application interface file, the console, and the self-extracting auto-migration package.

In response to the Amendment filed August 1, 2008, the Examiner reiterated his previous arguments while stating, “Applicants’ remarks that WinZip fails to teach a console configured to ‘scan a computer’ or ‘an application interface file.’ Such argument is improper because the specification also fails to do so.” Non-

Final Rejection mailed Nov. 13, 2008, page 3. Thus, instead of responding to the substance of Appellant's arguments regarding the 35 U.S.C. § 103 rejections, the Examiner contends that Appellant's arguments are improper because the specification allegedly fails to teach a "console configured to scan a computer" or "an application interface file." As previously noted, the "console configured to scan a computer" is clearly described in the specification. Furthermore, pages 4-7 of the specification (among other places in the specification and drawings) describe the application interface file in great detail.

The Examiner's 35 U.S.C. 103 rejections reflect the Examiner's refusal to acknowledge teachings in the specification and even language in the claims themselves. The Examiner blindly attempts to apply WINZIP to the claimed system for describing, extracting, and migrating application information, but WINZIP, as described in Nico Mak and O'Connell, is not capable of or intended to describe, extract, and/or migrate application information as claimed in claim 1. Network Associates does not remedy the deficiencies of Nico Mak and O'Connell.

The following comments show that the claims distinguish over the cited references and reiterate the points Appellant made in the Amendment filed August 1, 2008. As demonstrated below, the cited references do not teach an application

interface file, a console configured to scan a computer, or a self-extracting auto-migration package.

Nico Mak, in view of O'Connell and Network Associates, fails to teach "an application interface file identifying how to convert said files and settings from said first version to said second version of said application program," as recited in claim 1. According to the Examiner, an application interface file "is in a self extract WinZip file, sent from a computer to another computer, this file provides the features as discussed in WinZip Version 7.0 of Nico Mak, such as an .ini file or using registry." Non-Final Rejection mailed Nov. 13, 2008, page 8. The Examiner's argument is unclear. Furthermore, Appellant is unable to find anywhere that Nico Mak teaches that a .ini file (or any other file) identifies how to convert settings from a first version of an application program to a second version of an application program. O'Connell and Network Associates do not remedy this deficiency of Nico Mak. Claim 1 distinguishes over the cited references for at least this reason.

Nico Mak, in view of O'Connell and Network Associates, fails to teach a "console configured to scan said first computer for said files and settings to be migrated to said second computer," as recited by claim 1. The Examiner apparently cites page 5 of O'Connell, although the Examiner's source is not clear.

Non-Final Rejection mailed Nov. 13, 2008, page 9. O'Connell, on page 5, teaches that a user may "select the file(s) you want to compress" to add to a ZIP file. However, the cited O'Connell passage does not teach or suggest *scanning* a first computer for files and settings to be migrated to a second computer. The Examiner argues that "putting files in the Zip file . . . is only another expression of 'scanning.'" Non-Final Rejection mailed May 22, 2008, page 3. Applicant disagrees. One of ordinary skill in the art would not equate a user putting files in a Zip file, which is taught in O'Connell, to the scanning process recited in claim 1. Further, O'Connell does not even mention settings, much less scanning for settings, as recited in claim 1. Both Nico Mak and Network Associates fail to remedy these deficiencies of O'Connell.

The Examiner argues that "to disclose for this [sic] inherent acts of using a console for scanning computer before migrating files from an UnZip package to the computer, [Network Associates] discloses performing the scan of all the drives available to the system." Non-Final Rejection mailed Nov. 13, 2008, page 10. Examiner's support for this conclusion is that Network Associates "provides various scanning including to scan the registry for setting up file migration (i.e. Title: Migration Technical Manual)." Non-Final Rejection mailed Nov. 13, 2008, page 10. As a first point, the title Migration Technical Manual" does not show,

teach, or suggest scanning for said files and settings to be migrated to said second computer.

Furthermore, the preface in Network Associates notes that the Network Associates reference “specifically addresses the issue of migration to Total Virus Defense version 4 and gives advice and examples as to how to this can best be accomplished.” Network Associates, page 1. In other words, Networks Associates discusses migrating (*i.e.*, updating) “from existing Anti-virus Toolkit and VirusScan 3.x to TVD SuiteVersion 4.” Page 2. In contrast, claim 1 is directed to “migrating files and settings associated with said application program from said first computer to said second computer.” Thus, the migration discussed in Network Associates is not comparable to the migration recited in claim 1.

Nico Mak, in view of O’Connell and Network Associates, fails to teach a “self-extracting auto-migration package further comprising said files and settings for migration to said second computer,” as recited in claim 1. The Examiner, without citing any supporting sources, argues that a “self-extracting auto-migration package comprising said files and settings” is “any .ZIP file created by WinZip 7.0.” Non-Final Rejection mailed Nov. 13, 2008, page 9. The only reference to settings among sources cited by Examiner is in Nico Mak, which teaches that “WinZip now uses the registry instead of winzip32.ini.” *Nico Mak*, page 1.

However, none of Nico Mak, O'Connell, or Network Associates teach or suggest that a .ZIP file contains "settings for migration" obtained by "scanning said first computer."

Appellant also notes that the specification defines Self-extracting Auto-Migrate Packages (STAMPs) as self-executing files that contain "all of the files and settings to be migrated to the Target PC" and "the intelligence needed to write files to the appropriate destination and to make the appropriate registry changes." Specification, paragraph 77. Examiner has not shown where any of the cited references shows, teaches, or suggests that .ZIP files contain intelligence needed to write files to the appropriate destination and to make the appropriate registry changes to update a second version of an application program on a second computing system with files and settings of a first version of the application program on a first computing system. The Examiner has failed to establish a prima facie case of obviousness for at least this reason.

For at least the reason that the cited references fail to teach or suggest all the features of claim 1, Appellant respectfully submits that claim 1 is allowable. Claims 4-7 and 10-18 depend from claim 1 and are allowable for at least the same reasons that claim 1 is allowable.

2. *The Cited References Fail to Teach Various Features of Claim 3*

Nico Mak, O'Connell, and Network Associates fail to teach or suggest various features of claim 3. For example, the cited references do not teach a "Personality Package comprising user settings, user preferences, application programs and data files for migration from a source computer to a destination computer," as recited by claim 3. With respect to this feature of claim 3, the Examiner argues, "[A]ll the content used to packed [sic] in the WinZip file; *i.e.* a created zipped file having, 'Something or Other zip.'" Non-Final Rejection mailed Nov. 13, 2008, page 12. In addition to the absence of a cited source for Examiner's argument, it is unclear how Examiner's statement relates to "user settings, user preferences, application programs and data files for migration."

Claim 3 also recites that the "Personality Package correspond[s] to specified application versions." The Examiner argues, "*i.e.* a package of an application used to stored in a directory such as seen in O'Connell, p. 4." Non-Final Rejection mailed Nov. 13, 2008, page 12. However, Appellant could not find any passage in page 4 of O'Connell, or anywhere else in O'Connell, that relates to a "Personality Package corresponding to specified application versions." Further, it is unclear how the Examiner's statement relates to "specified application versions." Nico Mak and Network Associates both fail to remedy this deficiency of O'Connell.

The cited references fail to teach or suggest “generating an error if said destination application versions do not match,” as recited by claim 3. The Examiner argues, “Nico Mak, provides configuration that improves a user manually installing the features of the WinZip application into a computer. Where installing error is generated based on the Windows operating system, the act of getting application version specifics is only a manual act performed by a user.” Non-Final Rejection mailed Nov. 13, 2008, page 13. The Examiner fails to cite a source for his argument, and Appellant is unable to find support for his conclusion in the cited references. Further, the Examiner appears to argue that a user can manually discover application versions after an error. In contrast, claim 3 recites, “*generating an error if said destination application versions do not match.*”

For at least the reason that Nico Mak, in view of O’Connell and Network Associates, fails to teach or suggest all the features of claim 3, Appellant respectfully submits that claim 3 is allowable. Claims 21 and 22 depend from claim 3 and are allowable for at least the same reasons that claim 3 is allowable.

3. *Nico Mak does not Disclose the Executable Program Recited in Claim 4*

As previously noted, claim 4 depends from claim 1 and distinguishes over Nico Mak, O’Connell, and Network Associates for at least the same reasons that claim 1 distinguishes over these references. Claim 4 further distinguishes over

Nico Mak, O'Connell, and Network Associates by reciting that the console further comprises "an executable program that scans for environment settings and files to be migrated and builds said self-extracting auto-migration packages."

Examiner's rejection of claim 4 is unclear. With respect to claim 4, Examiner states, "Nico Mak discloses the WinZip with Drag and Drop, 'File Properties' for creating self-extractor packages." Non-Final Rejection mailed Nov. 13, 2008, page 10. It is unclear how the Examiner's statement relates to "an executable program that scans for environment settings and files to be migrated" or an executable program that "builds said self-extracting auto-migration packages." Appellant submits that the cited references do not teach an executable program "capable of scanning for environment settings and files and building a self-extracting auto-migration package," as recited in claim 4.

4. Nico Mak Does Not Disclose a Console Edit Function Recited in Claim 5

As previously noted, claim 5 depends from claim 1 and distinguishes over Nico Mak, O'Connell, and Network Associates for at least the same reasons that claim 1 distinguishes over these references. Claim 5 further distinguishes over Nico Mak, O'Connell, and Network Associates by reciting that the console comprises an edit function. With respect to claim 5, the Examiner states, "Nico Mak discloses WinZip which is adaptable to a standard Window like Window 95,

editable by a ‘File Properties.’” Non-Final Rejection mailed Nov. 13, 2008, page 11. It is unclear where a “standard Window” is taught in Nico Mak or how a “standard Window” is relevant to the edit function recited in claim 5. Appellant submits that the cited references do not teach the edit function recited in claim 5.

5. *The Office Action Does Not Clearly Address the Features of Claim 6*

As previously noted, claim 6 depends from claim 1 and distinguishes over Nico Mak, O’Connell, and Network Associates for at least the same reasons that claim 1 distinguishes over these references. Claim 6 further distinguishes over Nico Mak, O’Connell, and Network Associates by reciting that the console further comprises “a filter for determining which settings and file types are to be included in said self-extracting auto-migration package.” The Office Action states, “With regard to limitation of Claim 6, see all commands shown in page 2.” Non-Final Rejection mailed Nov. 13, 2008, page 11. It is unclear to which reference the Office Action refers. Furthermore, the cited references do not teach anything comparable to the filter recited in claim 6.

6. *The Office Action Does Not Clearly Address the Features of Claim 13*

As previously noted, claim 13 depends from claim 1 and distinguishes over Nico Mak, O’Connell, and Network Associates for at least the same reasons that claim 1 distinguishes over these references. Claim 13 further distinguishes over

Nico Mak, O'Connell, and Network Associates by reciting that "said self-extracting auto-migration package includes an operating system conversion capability." Examiner states, "With regard to limitation of Claim 13, Buttons EXTRACT in the ZIP file." Non-Final Rejection mailed Nov. 13, 2008, page 11. It is unclear how the extract button in WinZip is related to the operating system conversion capability recited in claim 13. Appellant submits that the cited references fail to teach the operating system conversion capability recited in claim 13.

7. *The Examiner Does Not Clearly Address the Features of Claim 14*

As previously noted, claim 14 depends from claim 1 and distinguishes over Nico Mak, O'Connell, and Network Associates for at least the same reasons that claim 1 distinguishes over the cited references. Claim 14 further distinguishes over Nico Mak, O'Connell, and Network Associates by reciting that "said self-extracting auto-migration package includes disk space verification." Examiner states, "With regard to limitation of claim 14, associated with Windows commands." Non-Final Rejection mailed Nov. 13, 2008, page 11. It is unclear which commands in the cited references are related to disk space verification. Appellant submits that the cited references fail to teach a self-extracting auto-migration package with disk space verification.

8. *The Examiner Fails to Set Forth an Appropriate Basis for Rejecting Claim 18*

The Examiner fails to set forth an appropriate basis for rejecting claim 18. Instead, the Examiner states, “Official notice is taken that User-defined profiles recited in this claim is only data limitation that is included but does nothing in the claim.” Non-Final Rejection mailed Nov. 13, 2008, page 12. Applicant disagrees with Examiner’s assertion that “User-defined profiles . . . does nothing in the claim.” Furthermore, the purpose of “official notice” is not to allow an examiner to make a baseless assertion that an element “does nothing in [a] claim,” but is a procedure for making a rejection based on common knowledge or facts not in the record. *See MPEP 2144.03*.

As explained in the MPEP, “[o]fficial notice unsupported by documentary evidence should *only* be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of *instant and unquestionable demonstration* as being well-known.” *MPEP 2144.03* (emphasis added). Moreover, “[a]llegations concerning specific ‘knowledge’ of the prior art, which might be peculiar to a particular art should also be supported and the appellant similarly given the opportunity to make a challenge.” *In re Pardo and Landau*, 684 F.2d 912, 917, 214 USPQ 673, 677 (CCPA 1982). The Federal Circuit has also held that the Patent Office must demonstrate that the alleged

support existed at the time the claimed invention was made. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1093, 231 USPQ 375, 379 (Fed. Cir. 1986). The Examiner does not provide any such support for his assertion.

Appellant timely challenged the Examiner's Official Notice in the Amendment filed August 1, 2008. As noted in MPEP 2144.03:

If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 C.F.R. 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 C.F.R. 1.104(d)(2).

The Examiner did not respond to Appellant's challenge and did not provide documentary evidence in the next Office action. Thus, the rejection of claim 18 cannot be maintained.

9. *The Office Action Does Not Clearly Address the Features of Claim 21*

As previously noted, claim 21 depends from claim 3 and distinguishes over Nico Mak, O'Connell, and Network Associates for at least the same reasons that

claim 3 distinguishes over the cited references. Claim 21 further distinguishes over Nico Mak, O'Connell, and Network Associates by reciting "determining whether said file is a shell link" and "if said file is a shell link, adding said file to a shell link list." Examiner argues that the "shell links is part of the Windows operating system." Non-Final Rejection mailed Nov. 13, 2008, page 15. However, Examiner fails to point to any teaching or suggestion of "determining whether said file is a shell link" or "adding said file to a shell link list" if the file is a shell link.

10. The Office Action Does Not Clearly Address the Features of Claim 22

As previously noted, claim 22 depends from claim 3 and distinguishes over Nico Mak, O'Connell, and Network Associates for at least the same reasons that claim 3 distinguishes over these references. Claim 22 further distinguishes over Nico Mak, O'Connell, and Network Associates by reciting "updating shell links in said destination computer using said shell link list." With respect to this feature, Examiner states that "WINZIP 7.0 or WINZIP are embedded in Windows, where shell links is part of the Windows operating system." Non-Final Rejection mailed Nov. 13, 2008, page 15. Examiner's statement does not address the functionality of updating shell links in a destination computer using shell link lists. Furthermore, the cited references do not teach updating shell links in a destination computer using a shell link list, as recited in claim 22.

X. APPENDIX

A. Claim Section

The following listing of claims is a clean copy of all claims pending the application.

1. (Rejected) A system for describing and extracting application information, comprising:

(A) A first computer system, said first computer system further comprising:

- (1) an input device;
- (2) a display device; and
- (3) A processing unit, said processing unit further comprising:
 - (a) a processor
 - (b) memory; and
 - (c) A long-term storage device;

(B) A second computer system, said second computer system further comprising:

- (1) an input device;
- (2) a display device; and
- (3) a processing unit, said processing unit further comprising:

- (a) a processor;
 - (b) memory; and
 - (c) a long-term storage device;
- (C) a first version of an application program resident on said long term storage device of said processing unit of said first computer system;
- (D) a second version of said application program resident on said long term storage device of said processing unit of said second computer system;
- and
- (E) means for migrating files and settings associated with said application program from said first computer to said second computer, wherein said means for migrating further comprises:
- (1) an application interface file identifying how to convert said files and settings from said first version to said second version of said application program;
 - (2) a communication channel between said first computer system and said second computer system;
 - (3) a console in communication with and configured according to said application interface file, said console configured to scan said

first computer for said files and settings to be migrated to said second computer; and

(4) a self-extracting auto-migration package built by said console, said self-extracting auto-migration package further comprising said files and settings for migration to said second computer, said self-extracting auto-migration package configured to update said second version of said application program with said files and settings of said first version.

2. (Canceled)

3. (Rejected) A method for extracting and migrating application information, comprising:

- (A) loading Personality Package corresponding to a user, said Personality Package comprising user settings, user preferences, application programs and data files for migration from a source computer to a destination computer, said Personality Package corresponding to specified application versions;
- (B) executing said Personality Package;
- (C) getting a file;

- (D) copying said file, and determining whether migration of additional files is required and if additional files are required returning to said getting a file step;
- (E) getting a registry;
- (F) copying said registry;
- (G) getting application version specifics, and testing to determine if destination application versions in said destination computer match said application versions specified in said Personality Package, and generating an error if said destination application version do not match; and
- (H) updating links.

4. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said console modules further comprises:
an executable program that scans for environment settings and files to be migrated and builds said self-extracting auto-migration packages.

5. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said console further comprises:
an edit function.

6. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said console further comprises:
a filter for determining which settings and file types are to be included in a said self-extracting auto-migration package.

7. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package is a self-executing file.

8. (Canceled)

9. (Canceled)

10. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package is editable by a user.

11. (Previously Presented) The system for describing and extracting

application information, as recited in claim 1, wherein self-extracting auto-migration package is password protected.

12. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package includes data compression.

13. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package includes an operating system conversion capability.

14. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package includes disk space verification.

15. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package further comprises a text description capability.

16. (Rejected) The system for describing and extracting application

information, as recited in claim 1, wherein said self-extracting auto-migration package further comprises options for handling duplicate files.

17. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package includes the capability of performing unattended installation of files.

18. (Rejected) The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package further comprises user-defined profiles.

19. (Canceled)

20. (Canceled)

21. (Rejected) The method of claim 3, further comprising:
determining whether said file is a shell link; and
if said file is a shell link, adding said file to a shell link list.

22. (Rejected) The method of claim 21, further comprising updating shell links in said destination computer using said shell link list.

23. (Withdrawn) A computer-implemented method for creating an auto-migration package comprising:

scanning a first computer for application data associated with a first version of an application installed on the first computer;

including the application data in an auto-migration package;

including, in the auto-migration package, intelligence for updating a second version of the application with the application data, the second version of the application being installed on a second computer.

24. (Withdrawn) The computer-implemented method of claim 23, wherein the application data comprises at least one of:

a file associated with the application;

a setting associated with the application.

25. (Withdrawn) The computer-implemented method of claim 24, wherein the intelligence for applying the second version of the application comprises at

least one of:

intelligence for writing the file to an appropriate destination on the second computer;

intelligence for making an appropriate registry change on the second computer.

B. Claim Support and Drawing Analysis Section

1. A system for describing and extracting application information, comprising:

(A) A first computer system {page 1, paragraphs 1 and 3; page 2, paragraph 5; page 3, paragraphs 13, 15, and 23; page 4, paragraph 24; page 5, paragraph 39; page 7, paragraphs 75 and 76; page 8, paragraphs 76, 77, 78, 80, 82, and 84; page 9, paragraph 88; page 10, paragraphs 88 and 89; page 11, paragraph 90; figure 1, numbers 100, 104, 108, and 112} said first computer system further comprising:

(1) an input device {page 7, paragraph 75; figure 1, numbers 102, 106, 110, and 114};

(2) a display device {page 7, paragraph 75; figure 1, numbers 107, 111, 115, and 116}; and

(3) A processing unit {page 7, paragraph 75; figure 1, number 101}, said processing unit further comprising:

(a) a processor {page 7, paragraph 75; page 10, paragraph 89};

(b) memory {page 7, paragraph 75}; and

(c) A long-term storage device {page 7, paragraph 75; page 9, paragraph 80};

(B) A second computer system {page 1, paragraphs 1 and 3; page 2, paragraph 5; page 3, paragraphs 13, 15, and 23; page 4, paragraph 24; page 5, paragraph 39; page 7, paragraphs 75 and 76; page 8, paragraphs 76, 77, 78, 80, 82, and 84; page 9, paragraph 88; page 10, paragraphs 88 and 89; page 11, paragraph 90; figure 1, numbers 100, 104, 108, and 112}, said second computer system further comprising:

(1) an input device {page 7, paragraph 75; figure 1, numbers 102, 106, 110, and 114};

(2) a display device {page 7, paragraph 75; figure 1, numbers 107, 111, 115, and 116}; and

(3) a processing unit {page 7, paragraph 75; figure 1, numbers 101, 105, 109, and 113}, said processing unit further comprising:

(a) a processor {page 7, paragraph 75; page 10, paragraph 89};

(b) memory {page 7, paragraph 75}; and

(c) a long-term storage device {page 7, paragraph 75; page 9, paragraph 80};

(C) a first version of an application program {**page 1, paragraphs 1 and 3; page 2, paragraphs 3, 4, and 10; page 3, paragraphs 15, 17-21, and 23; page 4, paragraphs 24, 34, 35, and 39; page 5, paragraphs 39, 40, 47, and 50; page 7, paragraphs 68 and 74; page 8, paragraphs 78, 82, and 85; page 9, paragraphs 85-87; page 10, paragraphs 88 and 89; page 11, paragraphs 89-92; page 12, paragraphs 92-94; page 13, paragraphs 95 and 96; figure 4, numbers 401a-n; figure 5A, number 501; figure 6, number 605; figure 7A, number 703**} resident on said long term storage device of said processing unit of said first computer system;

(D) a second version of said application program {**page 1, paragraphs 1 and 3; page 2, paragraphs 3, 4, and 10; page 3, paragraphs 15, 17-21, and 23; page 4, paragraphs 24, 34, 35, and 39; page 5, paragraphs 39, 40, 47, and 50; page 7, paragraphs 68 and 74; page 8, paragraphs 78, 82, and 85; page 9, paragraphs 85-87; page 10, paragraphs 88 and 89; page 11, paragraphs 89-92; page 12, paragraphs 92-94; page 13, paragraphs 95 and 96; figure 4, numbers 401a-n; figure 5A, number 501; figure 6, number 605; figure 7A, number 703**} resident on said long term storage device of said processing unit of said second computer system; and

(E) means for migrating {page 1, paragraphs 1 and 3; page 2, paragraph 4; page 3, paragraph 23; page 4, paragraph 24; page 7, paragraph 76; page 8, paragraphs 77 and 78; page 9, paragraph 88; page 10, paragraph 89; figure 1, numbers 100, 104, 108, and 112} files {page 1, paragraph 1; page 2, paragraphs 3 and 4; page 3, paragraph 23; page 4, paragraph 24; page 5, paragraphs 39, 50, and 52; page 7, paragraph 76; page 8, paragraphs 76, 77, 79, 80, and 83-85; page 9, paragraphs 85, 87, and 88; page 10, paragraphs 88 and 89; page 11, paragraph 92, page 12, paragraphs 92 and 94; page 13, paragraph 95; figure 3, number 303; figure 5B, number 514} and settings {page 1, paragraph 1; page 2, paragraphs 3 and 4; page 3, paragraph 23; page 4, paragraph 24; page 5, paragraphs 39, 50, and 52; page 7, paragraph 76; page 8, paragraphs 76, 77, 79, 80, and 83-85; page 9, paragraphs 85-88; page 10, paragraphs 88 and 89; page 11, paragraphs 92 and 94; page 13, paragraph 94; figure 3, number 310; figure 5A, number 510} associated with said application program from said first computer to said second computer, wherein said means for migrating further comprises:

- (1) an application interface file {page 1, paragraph 1; page 2, paragraphs 3, 4, and 9; page 3, paragraphs 17-21 and 23; page 4,

paragraphs 24-39; page 5, paragraphs 39-52; page 6, paragraphs 52-67; page 7, paragraphs 68-74; page 11, paragraphs 90, 91, and 92; page 12, paragraphs 92-94; page 13, paragraph 95; figure 4, number 402; figure 5A, number 503; figure 6, numbers 601, 602, and 605; } identifying how to convert said files and settings from said first version to said second version of said application program;

(2) a communication channel **{page 7, paragraph 75; figure 1, number 116}** between said first computer system and said second computer system;

(3) a console **{page 7, paragraph 76; page 8, paragraph 76; page 10, paragraph 88}** in communication with and configured according to said application interface file, said console configured to scan said first computer for said files and settings to be migrated to said second computer; and

(4) a self-extracting auto-migration package **{page 7, paragraph 76; page 8, paragraphs 76, 77, and 80-83; page 9, paragraphs 87 and 88; page 10, paragraph 88; figure 2, numbers 204 and 206}** built by said console, said self-extracting auto-migration package

further comprising said files and settings for migration to said second computer, said self-extracting auto-migration package configured to update said second version of said application program with said files and settings of said first version.

3. A method for extracting and migrating application information, comprising:

- (A) loading Personality Package **{page 5, paragraph 39, page 10, paragraph 89; page 11, paragraphs 89 and 90; figure 3, number 301}** corresponding to a user, said Personality Package comprising user settings, user preferences, application programs and data files for migration from a source computer to a destination computer, said Personality Package corresponding to specified application versions;
- (B) executing said Personality Package **{page 10, paragraph 89; figure 3, number 302}**;
- (C) getting a file **{page 10, paragraph 89; figure 3, number 303}**;
- (D) copying said file **{page 10, paragraph 89; figure 3, number 308}**, and determining whether migration of additional files is required and if additional files are required returning to said getting a file step **{page 10,**

paragraph 89; figure 3, number 306};

(E) getting a registry **{page 10, paragraph 89; figure 3, number 310};**

(F) copying said registry **{page 10, paragraph 89; figure 3, number 313};**

(G) getting application version specifics, and testing to determine if destination application versions in said destination computer match said application versions specified in said Personality Package **{pages 10 and 11, paragraph 89; figure 3, number 315}**, and generating an error if said destination application version do not match **{page 11, paragraph 89; figure 3, number 318};** and

(H) updating links **{page 11, paragraph 89; figure 3, number 317}**.

4. The system for describing and extracting application information, as recited in claim 1, wherein said console modules further comprises:

an executable program **{page 7, paragraph 76}** that scans for environment settings and files to be migrated and builds said self-extracting auto-migration packages.

5. The system for describing and extracting application information, as

recited in claim 1, wherein said console further comprises:

an edit function **{page 7, paragraph 76; page 8, paragraph 80; page 9, paragraph 87; page 10, paragraph 88; figure 2, number 204}**.

6. The system for describing and extracting application information, as recited in claim 1, wherein said console further comprises:

a filter **{page 7, paragraph 76; page 8, paragraph 77}** for determining which settings and file types are to be included in a said self-extracting auto-migration package.

13. The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package includes an operating system conversion capability **{page 9, paragraph 88}**.

14. The system for describing and extracting application information, as recited in claim 1, wherein said self-extracting auto-migration package includes disk space verification **{page 9, paragraph 88}**.

18. The system for describing and extracting application information, as

recited in claim 1, wherein said self-extracting auto-migration package further comprises user-defined profiles **{page 10, paragraph 88}**.

21. The method of claim 3, further comprising:
determining whether said file is a shell link **{page 10, paragraph 89; figure 3, number 306}**; and
if said file is a shell link, adding said file to a shell link list **{page 10, paragraph 89; figure 3, number 307}**.

22. The method of claim 21, further comprising updating shell links in said destination computer using said shell link list **{page 11, paragraph 89; figure 3, number 317}**.

C. Means Plus Function Analysis Section

1. A system for describing and extracting application information, comprising:

(A) A first computer system, said first computer system further comprising:

- (1) an input device;
- (2) a display device; and
- (3) A processing unit, said processing unit further comprising:
 - (a) a processor
 - (b) memory; and
 - (c) A long-term storage device;

(B) A second computer system, said second computer system further comprising:

- (1) an input device;
- (2) a display device; and
- (3) a processing unit, said processing unit further comprising:
 - (a) a processor;
 - (b) memory; and
 - (c) a long-term storage device;

(C) a first version of an application program resident on said long term storage device of said processing unit of said first computer system;

(D) a second version of said application program resident on said long term storage device of said processing unit of said second computer system; and

(E) means for migrating {page 1, paragraphs 1 and 3; page 2, paragraphs 4 and 5; page 3, paragraphs 13, 15, and 23; page 4, paragraph 24; page 5, paragraph 39; page 7, paragraphs 75 and 76; page 8, paragraphs 76, 77, 78, 80, and 82; page 9, paragraph 88; page 10, paragraphs 88 and 89; figure 1, numbers 100, 101, 104, 105, 108, 109, 112, and 113} files {page 1, paragraph 1; page 2, paragraphs 3 and 4; page 3, paragraph 23; page 4, paragraph 24; page 5, paragraphs 39, 50, and 52; page 7, paragraph 76; page 8, paragraphs 76, 77, 79, 80, and 83-85; page 9, paragraphs 85, 87, and 88; page 10, paragraphs 88 and 89; page 11, paragraph 92, page 12, paragraphs 92 and 94; page 13, paragraph 95; figure 3, number 303; figure 5B, number 514} and settings {page 1, paragraph 1; page 2, paragraphs 3 and 4; page 3, paragraph 23; page 4, paragraph 24; page 5, paragraphs 39, 50, and 52; page 7, paragraph 76; page 8, paragraphs 76, 77, 79, 80, and 83-85;

page 9, paragraphs 85-88; page 10, paragraphs 88 and 89; page 11, paragraphs 92 and 94; page 13, paragraph 94; figure 3, number 310; figure 5A, number 510} associated with said application program from said first computer to said second computer, wherein said means for migrating further comprises:

- (1) an application interface file **{page 1, paragraph 1; page 2, paragraphs 3, 4, and 9; page 3, paragraphs 17-21 and 23; page 4, paragraphs 24-39; page 5, paragraphs 39-52; page 6, paragraphs 52-67; page 7, paragraphs 68-74; page 11, paragraphs 90, 91, and 92; page 12, paragraphs 92-94; page 13, paragraph 95; figure 4, number 402; figure 5A, number 503; figure 6, numbers 601, 602, and 605; }** identifying how to convert said files and settings from said first version to said second version of said application program;
- (2) a communication channel **{page 7, paragraph 75; figure 1, number 116}** between said first computer system and said second computer system;
- (3) a console **{page 7, paragraph 76; page 8, paragraph 76; page 10, paragraph 88}** in communication with and configured according

to said application interface file, said console configured to scan said first computer for said files and settings to be migrated to said second computer; and

(4) a self-extracting auto-migration package {**page 7, paragraph 76; page 8, paragraphs 76, 77, and 80-83; page 9, paragraphs 87 and 88; page 10, paragraph 88; figure 2, numbers 204 and 206**} built by said console, said self-extracting auto-migration package further comprising said files and settings for migration to said second computer, said self-extracting auto-migration package configured to update said second version of said application program with said files and settings of said first version.

D. Evidence Section

No evidence pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 or entered by the Examiner is being submitted.

E. Related Proceedings Section

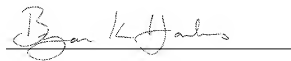
As detailed above, a notice of Appeal and a request for Pre-Appeal Conference were previously filed in this case on 4 September 2007. The Notice of Panel Decision from Pre-Appeal Brief review was mailed on 17 September 2007. The Panel reopened prosecution. Appellant is not aware of any other appeals, interferences, or judicial proceedings that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

XI. CONCLUSION

For at least the foregoing reasons, Appellant believes that each of the finally rejected claims in this application is in immediate condition for allowance. Accordingly, Appellant respectfully requests the reversal of the rejections of these claims and allowance of the same.

Respectfully submitted,

Date: 20 April 2009

A handwritten signature in cursive script, appearing to read "Bryan K. Hanks", is written over a horizontal line.

Bryan K. Hanks
Registration No. 52,991